

LIABILITY INSURANCE

Liability insurance, like other forms of insurance, protects against the possibility of loss. The risk of loss arises when the congregation, or someone for whom it is legally liable, acts or fails to act in a way that causes damage to another. The congregation faced with claims must deal with a number of issues, including (1) the exposure to liability to the injured party; (2) the potentially significant cost of defense against even unfounded claims; (3) the moral obligation to deal justly with those genuinely injured by the congregation's misconduct; and (4) the effect of a claim on the congregation's members and ministry. All of these problems will be greatly alleviated if the claim is covered by insurance. Providing insurance suitable to the needs and means of the congregation should be a routine and mandatory aspect of congregation management.

Look for an insurer that is experienced in insuring churches and has a policy designed for this purpose. Do not simply purchase whatever is offered by an insurance agent who is a member of the congregation. The agent may not have the best product or price for the congregation but does have a financial interest in selling it, since agents make commission on their sales. If the agent is an officer or member of the Congregation Council with a role in the decision to purchase, a conflict of interest is created.

A Typical Policy

An insurance policy is a written contract. It will provide the coverage it says it will, and nothing more. You must read and understand the plain terms of your policy. The typical insurance policy has several features.

1. A *cover, face, or "declarations" page* identifies the insured party, the policy period, the types of insurance provided, the amount of coverage purchased, the amount of the deductible that the insured is responsible for, and the endorsements (by code number) that make up the complete policy. Check the *endorsements* printed on separate sheets attached to the cover page, to be sure that you have them all, that they correspond to the declarations page, and that you know what they add or take away from your coverage.
2. An *insuring agreement* states what is covered, usually briefly. The insuring agreement will usually identify the types of damages covered and state if the policy is an "occurrence policy" (covering claims occurring during the policy period) or a "claims made policy" covering claims made during the policy period.
3. *Exclusions*. Read these with care. This is where the insurer takes away coverage for particular matters that might otherwise be within the insuring agreement.
4. *Definitions*. By defining terms, the policy may both add to and take away from what would otherwise be covered. Definitions of the insured and the types of damage covered are particularly important.
5. *Procedural provisions*. A notice clause obligates the insured to give prompt notice to the insurer, sometimes whenever there is reason to believe that a potential claim exists, and sometimes only when the

claim is actually asserted. A cooperation clause obligates the insured to let the insurer handle the claims process and to provide all information the insurer requires and to cooperate fully with the insurer.

6. *Endorsements*. These special forms clarify, add to, or take away from the coverage otherwise provided.

Types of Insurance

There are several types of insurance policies providing coverage for different situations, which should be considered by every congregation. The scope of coverage for each policy must be considered separately, but many of the issues will be common to all. Major types of policies are the following:

1. *General liability insurance*, sometimes referred to as commercial or comprehensive general liability (CGL). This is the basic liability insurance policy. Do not be misled by the use of the terms *comprehensive* or *general*. Exclusions, definitions, and endorsements may make the policy considerably less comprehensive or general than you think. CGL policies usually cover only property damage and bodily injury. Some may cover—and you can usually get an endorsement for—personal injury, which will be defined more broadly than bodily injury and cover such things as defamation or invasion of privacy. Congregations should have personal injury, as well as bodily injury, coverage.
2. *Automobile insurance*. A CGL policy will usually cover any motor vehicles you own. Be sure it does, or obtain separate coverage if it does not. A CGL policy will usually not, however, cover the congregation for automobiles not owned by the congregation. If an employee or volunteer has an accident while driving his or her own car on congregation business, the congregation may be liable but have no coverage. Nonowned auto coverage is important protection.
3. *Malpractice insurance*. This is coverage for damages from professional errors, such as in counseling. Clergy malpractice has been rejected in most states that have considered it. Nevertheless, such claims continue to be brought, and the cost of defense alone can justify maintaining the coverage. If the congregation is doing counseling from a secular rather than a spiritual perspective, or engaging in other professional activities, malpractice coverage should be mandatory.
4. *Errors and omissions insurance*. This is a variation of malpractice coverage that applies to professional services that do not ordinarily carry the risk of physical injury, such as insurance, accounting, legal, or real estate services. Discuss with your insurance agent whether you require such coverage.
5. *Directors and officers (D and O) coverage*. This protects board members and officers from liability for decisions made in their capacity as such. The Congregation Council and its officers, or the congregation's officers, would be protected by this coverage. The most common claim it protects against is unfair employment practices. A D and O policy will not protect

the congregation from such a claim unless the policy specifically so provides.

6. *Fiduciary liability insurance.* The most common application of this coverage is to protect people responsible for employee benefit plans.
7. *Umbrella, gap layer, and excess insurance.* These policies provide additional amounts of coverage and, in the case of umbrella policies, may also provide coverage not provided by the underlying policies.

Other types of insurance coverage besides liability insurance should be part of your total insurance program. Your congregation should have property damage coverage to cover hazards and to pay for rebuilding in the event of total destruction. Preferably this will cover replacement cost, not just payment for the present value of the items destroyed, lost, or damaged beyond repair. Consider also fidelity bond coverage for those who handle the congregation's funds; theft, disappearance, and destruction coverage for money losses not covered by the fidelity bond; crime coverage for burglary or theft; equipment, or boiler and machinery, insurance for losses from breakdowns of major equipment; and workers' compensation for on-the-job injuries to workers. Property damage and workers' compensation coverage are essential for every congregation. Other coverages may not be important to some congregations. Often a number of these coverages will be embodied in a single policy.

Basic Insurance Issues

Whatever type of coverage you purchase, be alert to the following issues:

1. *Who is covered?* Does the policy cover employees for their individual liability for acts committed in the service of the congregation? Does it cover volunteers? If not, ask for an endorsement. CGL policies will usually cover executive officers and directors of a corporation. Establish in writing with the insurer who this refers to for your congregation. Your terminology will differ from theirs.
2. *How much coverage do you have?* Buy enough coverage to protect against reasonably foreseeable risks. The last dollars of coverage are usually much less expensive than the first.
3. *How is defense of suits funded?* In most CGL policies, the insurer is obligated to defend, at whatever cost, in addition to paying claims up to the policy limits. In other policies, the cost of defense may be subject to a deductible first, count toward the policy limit, or be the insured's obligation in the first place subject to indemnification by the insurer after being paid.
4. When changing policies, be especially alert for *gaps in coverage.* Switching from a claims made to an occurrence policy, for example, leaves a gap for matters that may have already occurred but on which no claim has been made.
5. *Are you covered for claims of sexual misconduct?* Do not expect any policy to cover the perpetrator. However, your congregation might decide to buy a policy to cover defense, up to the point at which a judgment is made. Do look for coverage for the congregation, at a minimum.
6. *Are all of the activities of the congregation's ministry covered?* Be especially sure that you have coverage for

any separate or subsidiary ministries such as a school, counseling center, child-care center, camp, homeless shelter, soup kitchen, recreational programs, and the like. Be aware that failure to disclose activities where called for on an application for coverage may result in noncoverage.

7. *Be sure a CGL policy does not limit coverage to claims for events that occur on the premises.*
8. *Consider injury to, as well as by, volunteers.* They may not be covered by workers' compensation or a CGL policy. If you cannot obtain liability coverage for them, you might want to get an accident or medical payment policy for their benefit.
9. *Do not overlook nonowned auto liability.* Obtaining this coverage may require showing proof that drivers have coverage of a certain amount under their personal policies.

Insurance policies are valuable documents that should be kept in a secure file indefinitely. Claims can arise that may be covered by policies that the congregation had years, even decades in the past. Agents and insurers are not always able to reconstruct your policy and may not have copies. If you have not retained policies, it may be prudent to try to reconstruct them soon with your agent's help.

There are two other issues that should be considered in the context of protection from liability—indemnification and immunity. Most states will permit nonprofit corporations to indemnify directors, officers, and employees for certain defense costs and liability incurred while acting in the service of the corporation. Special procedures may be required, such as adopting suitable provisions in the bylaws, to implement the indemnification permitted by statute. Some acts cannot be the subject of indemnification. Indemnification does not eliminate congregational liability, but it enables the congregation to protect individuals associated with it in certain circumstances. Check with your local attorney for the indemnification provisions in your state and decide if you wish to implement them.

Most states have limited immunity for volunteers and uncompensated directors of nonprofit organizations. Others may grant immunity to the organization itself under certain conditions or limit liability to a determined amount. Some action by the congregation may be needed to gain the advantage of the immunity provisions, such as providing written recognition of the volunteer status of specific people, or purchasing a certain amount of insurance.

Resources

- Couser, Richard B. *Ministry and the American Legal System.* Minneapolis: Fortress Press, 1993.
- Kurtz, Daniel L. *Board Liability: Guide for Nonprofit Directors.* Mount Kisco, N.Y.: Moyer Bell Limited, 1988.
- Lai, Mary L., Terry S. Chapman, and Elmer L. Steinback. *Am I Covered For . . . ? A Comprehensive Guide to Insuring Your Non-Profit Organization.* San Jose: Consortium for Human Services, 1992.
- Nonprofit Risk Management Center, 1828 L St. NW, Suite 505, Washington, DC 20036, has several brochures, pamphlets, and publications available.
- Tremper, Charles Robert. *Reconsidering Legal Liability and Insurance for Nonprofit Organizations.* Washington, D.C.: Law College Education Services, Inc., 1989.

LIABILITY INSURANCE

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| <p>I. Our insurance policies are maintained indefinitely in a central file.
Yes No</p> <p>II. If we have not retained insurance policies, with the help of our agent we have reconstructed our policy coverage as much as possible.
Yes No</p> <p>III. Our insurance policies are audited annually to determine the nature, amount, and sufficiency of coverage.
Yes No</p> <p>IV. We have designated a responsible person or committee to keep informed and current on our insurance coverage and needs, and to deal regularly with our insurance agent.
Yes No</p> <p>V. Our employees and volunteers are covered individually for the same liability as the congregation (except for intentional acts, such as sexual misconduct).
Yes No</p> <p>VI. All of our ministry activities are insured, however separate they may be from the congregation's central activities.
Yes No</p> <p>VII. We actually read and review all of our insurance policies to be sure that they contain the coverage we think we have, and that we understand the exclusions, definitions, and endorsements.
Yes No</p> <p>VIII. We have personal injury, as well as bodily injury, coverage.
Yes No</p> <p>IX. We give prompt written notice to the insurer of any matters that come to our attention that could become the basis of a claim.
Yes No</p> <p>X. We have adequate coverage for any motor vehicles we own.
Yes No</p> <p>XI. We have nonowned auto coverage to protect us in the event of liability for accidents in which an employee or volunteer is driving his or her own vehicle on congregation business.
Yes No</p> | <p>XII. We have malpractice, professional liability, or errors and omissions coverage for all congregation ministries and activities, including counseling, that may result in damage other than by bodily injury or property damage.
Yes No</p> <p>XIII. We have directors and officers coverage that also covers the congregation.
Yes No</p> <p>XIV. If any of our employees or volunteers, or the congregation, administers employee benefit plans, we have fiduciary coverage.
Yes No</p> <p>XV. We have adequate property damage coverage for all risks to which our property is exposed, and in sufficient amounts to cover total loss.
Yes No</p> <p>XVI. We have fidelity bond coverage for people who handle the congregation's funds.
Yes No</p> <p>XVII. We have workers' compensation coverage for injury to employees on the job.
Yes No</p> <p>XVIII. We understand the deductible and defense costs for each of our policies.
Yes No</p> <p>XIX. We understand whether each of our policies is an occurrence or claims made policy.
Yes No</p> <p>XX. Our CGL policy is not limited to accidents that occur on the premises.
Yes No</p> <p>XXI. We have made provision for injuries to volunteers.
Yes No</p> <p>XXII. We are aware of the indemnification laws in our state and have acted on them as desired.
Yes No</p> <p>XXIII. We are aware of the immunity statutes in our state and have taken any steps required to maximize protection under them.
Yes No</p> |
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